

important issues and best practices in the area of voter identification. Moritz and Eagleton have reviewed all research, clarified the categorization of that research on our charts, and reconciled the research categories used in the two different analyses. Some states continue to resist easy categorization. We continue to wrestle, for example, classifying Florida, which has a photo ID requirement, but allows a prospective voter lacking ID to execute an affidavit and cast a regular, not a provisional, ballot.

**Work Plan:** In the remaining two months of the project, Moritz and Eagleton will continue to work together to develop policy guidance and best practices in the area of voter identification, based on our combined research and the case law. We will work closely with Eagleton and our Peer Review Group to produce a document for the EAC summarizing voter identification and suggesting best practices. We will work with the EAC to finalize our report on provisional voting.

### RESEARCH EFFORTS

We continued to examine and categorize voter registration forms across the states to see what forms of identification are requested from mail-in registrants in order to highlight how easily accessible states make information about voter identification. We resolved many, but not yet all, of the difficulties involved in determining the 2004 status of the states, especially because most of this material is gathered from state websites which at this point have been updated since 2004.

### VOTER ID AND TURNOUT ANALYSIS

The statistical analysis to gauge the effect of a state's voter ID regime on turnout was reviewed and refined in January. The refinement included a re-categorization of the states according to different levels of ID requirements. The critical difficulty was in determining which forms of ID must be shown and which could merely be requested. After reviewing summaries of the statutes, we revised our classification in order to allow the statistical researchers to get a more leverage on the analysis of the impact of voter identification requirements both on the casting of provisional ballots and on turnout.

**Description:** We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

**Progress:** Our findings continue to suggest that voter ID requirements have their greatest effect at the registration stage, as opposed to the turnout stage. In January we added a number of control variables to the analysis and continue to examine and reflect on the results. We look forward to a discussion of our methodology and findings with the Peer Review Group.

**Challenges:** The models we are using, while sophisticated, are difficult to run and interpret. The analyses are time-consuming.

**Work Plan:** We will complete a draft of the Voter ID report for the EAC in February.

## **PROJECT MANAGEMENT**

### **PEER REVIEW GROUP**

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

**Progress:** We updated PRG members on the progress of our research and canvassed them to set a date in February for review and comment on our Voter ID analysis. We also plan to share with the group the EAC's comments on the Provisional Voting paper due to the delays in getting the EAC's feedback on our report. We have asked the PRG

**Challenges:** No new challenges were encountered.

### **COORDINATION AND INFORMATION MANAGEMENT**

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

### **INFORMATION SYSTEM**

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added. During December we rearranged the folders on the hard drive and created a master document detailing which folder each report, memo, or data source could be found in.

**Projections:** The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

## INTRANET

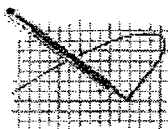
**Description:** All project team members have signed on to the Intranet site, and regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

## **FINANCIAL REPORT**

As we advised the EAC in our request for a no-cost extension to the contract, which EAC approved January, we will not submit an invoice for expenses for January, but rather will submit a combined invoice in early March for January and February.

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. The contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from the project during the period January 1- February 28,, 2006, will be sent in early March under separate cover to Ms. Dianna Scott, Administrative Officer at the EAC.



Juliet E.  
Thompson-Hodgkins/EAC/GO  
V

02/13/2006 11:31 AM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject EAgleton Comments

History:

✉ This message has been replied to.

Karen,

I have reviewed the Eagleton final report and have a couple of questions for clarification:

1. On page 8, in the paragraph after the bulleted information, they list "high mobility" as a factor for the effective operation of provisional voting factors. There is no previous mention of this as a factor. What research do they have to back up naming this as a factor?
2. On page 10, line 2, the sentence begins "A rough estimate"? I have no idea what they are trying to say here. Is it that they are trying to compare the number of provisional ballots actual counted to the estimate that MIT made of lost ballots in 2000? If so, then they need to consider in making this statement whether the MIT survey would be influenced by the onset of statewide voter registration databases and interim measures that have been instituted by election officials that would improve the quality of the voter registration list and thus limit the need for provisional ballots.
3. On page 13, second bullet, do they literally mean that the state should provide poll workers training? Most of this training is provided in actuality by the local election jurisdiction (county, municipality). Are they deviating from the current practice?

I have many other comments that are more appropriately directed to the Commissioners in considering what has been provided by Eagleton in terms of what they desire to make "guidance" or "best practices".

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

024125



"Tom O'Neill"

02/09/2006 02:22 PM

To klynndyson@eac.gov

cc

bcc

Subject RE: Schedule for review of Provisional Voting paper

John, I did talk about the review with Ray Martinez and Paul DeGregorio yesterday, and they assured me the topic was on their agenda for the meeting this morning. Karen called this morning to tell me she was going into the meeting, and she asked about the schedule for our completion of the Voter ID paper. I told her she'd have it by the end of the month. (I think we should schedule now a meeting in March to brief the Commissioners on Voter ID and—in effect—bring the project to a close. Ray told me we should schedule that meeting soon since their agenda is filling up.)

So, I will take credit for breaking the logjam only if I get no blame for not having done it sooner.

Tom O'Neill

-----Original Message-----

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Thursday, February 09, 2006 1:18 PM

**Cc:** john.weingart@rutgers.edu

**Subject:** Re: Schedule for review of Provisional Voting paper

Late breaking news-

By next Tuesday I will get, to you, a series of clarifying questions that the Commissioners will have provided me regarding the Provisional Voting Best Practices Document.

They approved the format of the document, but did suggest an Executive Summary at the beginning, which would explain the process, including how the best practices criteria and recommended best practices were arrived at by the Project Working Group.

The conclusions on Page 19 should be at the front, rather than the back of the document.

The format used for this document is a good and acceptable one that should be followed for your forthcoming Voter ID Best Practices document. The Commissioners look forward to receipt of this in early March.

Regards-

024126

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123



"John Weingart"  
<john.weingart@rutgers.edu>

To klynndyson@eac.gov

cc

02/06/2006 05:37 PM

bcc

Please respond to  
john.weingart@rutgers.edu

Subject Re: no-cost extension

History:

This message has been replied to.

Karen - Basically, we feel it would be more efficient to combine the January and February invoices. Now that the EAC has agreed to the no-cost extension, we have to extend the time table and dollars attached to the subcontract Eagleton has with Ohio and the consulting agreement we have with Tom O'Neill. Until that paperwork has been processed by all the necessary parties, Rutgers will not allow us to pay invoices submitted by Ohio or O'Neill beyond the original terms (which ended on December 31st). In addition, because we did not receive the no-cost extension paperwork back from the EAC until the end of January, Eagleton did not directly bill various expenses that were incurred in January and must now be transferred to the EAC account for that period.

I hope this provides the explanation you need. Thanks.

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732) 932-9384, x.290

klynndyson@eac.gov wrote:

>  
> John-  
>  
> Could I get a brief explanation of the request for the combined invoice?  
>  
> I don't believe its a problem, but the contract does stipulate monthly  
> invoices.  
>  
> I'll check into this.  
>  
> K  
>  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123

024126



"John Weingart"  
<john.weingart@rutgers.edu>

01/25/2006 01:46 PM

Please respond to  
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>

cc "Lucy Baruch" <baruch@rci.rutgers.edu>

bcc

Subject no-cost extension

History:

✉ This message has been replied to.

Karen - I just received a fax of the no-cost extension request. The last line of section14 refers to a completion date of February 13. Is it possible to change that to the date we had requested, March 31? If the answer to that question will take some time, we could process this paper through the University (Our Office of Research and Sponsored Programs has to provide the requested signatures) and then process a subsequent page extending from Feb 13 to the end of March.

Thanks, John

--

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732) 932-9384, x.290

024129





"Tom O'Neill"

02/06/2006 03:35 PM

To klynndyson@eac.gov

cc

bcc

Subject RE: no-cost extension

Thanks, John. I'll see Degregorio at least on Tuesday and will see what I can find out from him. Others from EAC may be at the session as well.

Tom O'Neill

-----Original Message-----

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Monday, February 06, 2006 12:25 PM

**To:** john.weingart@rutgers.edu

**Subject:** Re: no-cost extension

John-

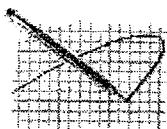
I assume the no-cost extension process is now completed.

I am told that review of your Best Practices document will be completed this week.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

024130



Tamar Nedzar/EAC/GOV

01/25/2006 12:56 PM

To: Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject: Re: Fw: no-cost extension status

History:

This message has been replied to.

Karen,

Faxed the SF30 to Weingart to sign and fax back to us. After that, I'll give that piece of it to Tom to sign, but he won't be back in the office until Monday. Once he signs, Aime will give all the paperwork to the Chairman for his signature. When everything is signed, it will come back to you to send out or do whatever else needs to be done. My feeling is that the earliest the work can get done is by Tuesday.

This is a fun exercise!

Tamar Nedzar

Law Clerk

U.S. Election Assistance Commission

1225 New York Avenue, NW Suite 1100

Washington, DC 20005

(202) 566-2377

<http://www.eac.gov>

[TNedzar@eac.gov](mailto:TNedzar@eac.gov)

-----Karen Lynn-Dyson/EAC/GOV wrote: -----

To: Tamar Nedzar/EAC/GOV@EAC

From: Karen Lynn-Dyson/EAC/GOV

Date: 01/25/2006 12:31PM

Subject: Fw: no-cost extension status

Karen Lynn-Dyson

Research Manager

U.S. Election Assistance Commission

1225 New York Avenue, NW Suite 1100

Washington, DC 20005

tel:202-566-3123

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 01/24/2006 12:28 PM -----

Thanks.

-- John Weingart, Associate Director

Eagleton Institute of Politics

(732)932-9384, x.290

klynndyson@eac.gov wrote:

>

024131

> John-  
>  
> The papers are now with the Chair ( Paul DeGregorio) for his signature.  
> I have asked that the process be completed not later than Thursday.  
>  
> K  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123



"John Weingart"  
<john.weingart@rutgers.edu>

01/24/2006 01:56 PM

Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov

cc

bcc

Subject Re: no-cost extension status

History:

This message has been forwarded.

Thanks.

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732) 932-9384, x.290

klynndyson@eac.gov wrote:

>  
> John-  
>  
> The papers are now with the Chair ( Paul DeGregorio) for his signature.  
> I have asked that the process be completed not later than Thursday.  
>  
> K  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123

024133



"John Weingart"  
<john.weingart@rutgers.edu>

01/23/2006 10:50 AM

Please respond to  
john.weingart@rutgers.edu

To "Karen Lynn-Dyson" <klynndyson@eac.gov>

cc

bcc

Subject no-cost extension status

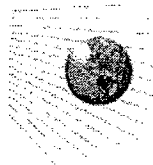
History:

✉ This message has been replied to.

Hi Karen - Do you think we can get approval of our no-cost extension request this week? We really need it for the Rutgers administrative processes since, from their point of view, the project concluded on December 31st. Thanks, John

--  
-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732) 932-9384, x.290

024134



Nicole  
Mortellito/CONTRACTOR/EAC  
/GOV

01/20/2006 02:01 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Re: Please provide me with a hard copy of the Eagleton cost  
proposal, when you can

History:

This message has been forwarded.



EAC Eagleton Institute Budget 3-22-05-1.xls

Regards,

Nicole K. Mortellito  
Special Projects  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.2209 phone  
202.566.3128 fax  
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

01/20/2006 12:54 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC

cc

Subject Please provide me with a hard copy of the Eagleton cost  
proposal, when you can

Thanks

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

024135

**Eagleton Institute of Politics, Rutgers The State University of New Jersey**  
**US Election Assistance Commission Project Budget (3/22/05)**

Description	Budget	
<b>Personnel</b>		
Eagleton faculty/senior staff	35,000	Mandel, Weingart, Reed, Linky (various percentages)
Eagleton staff: logistics/administrative/clerical	15,000	(various percentages)
Fringe (32.5%)	16,250	
	<b>66,250</b>	
<b>Hourly Personnel</b>		
Research Coordinator	21,250	1250 hours at \$17 per hour
Logistics/Admin Coordinator	12,325	725 hours at \$17 per hour
Research assistants	7,200	300 hours at \$12 per hour for two researchers
Fringe on Hourly (9%)	3,670	
	<b>44,445</b>	
<b>Subtotal Personnel Expenses</b>	<b>\$110,695</b>	
<b>Honoraria</b>		
Honoraria for Peer Review Group	10,000	10 at \$1,000
<b>Public Hearings (3 in 3 cities)</b>		
Public Hearings	75,000	3 hearings at \$25K per EAC figures
2 Hearings in DC- train, ground, lodging, meals*	3,480	attended by 3 staff
1 Hearings in St. Louis- air, ground, lodging, meals**	2,640	attended by 3 staff
	<b>81,120</b>	
<b>Briefings/Meetings with EAC</b>		
Train, ground, lodging, meals***	5,200	5 briefings in DC, attended by 2 staff
<b>General Operations</b>		
Office supplies, software, telephone, copying, postage	10,000	
Desktop computers, laptop, printer	10,000	
	<b>20,000</b>	
<b>Subcontract</b>		
Project Director- O'Neill	79,500	80% time April – Aug., 60% Sept. – Oct.
Ohio State University- Legal Analysis	84,744	Partner institution, Moritz College of Law, OSU
<b>Subtotal Non-Personnel Expenses</b>	<b>\$280,564</b>	
<b>Subtotal All Direct Cost</b>	<b>391,259</b>	
Modified Total Direct Cost \$277,015****		
F&A on Modified Total Direct Cost (55.5%)	153,743	Rutgers University federally approved rate.
<b>TOTAL Project Budget</b>	<b>\$545,002</b>	
<b>Optional Surveys</b>		
State Election Officials	15,000	Eagleton
Young Voters	25,000	Eagleton
Provisional Voting, 1st state	116,000	OSU Political Science
Provisional Voting, 1st additional state	75,000	OSU Political Science
Provisional Voting, 2nd additional state	60,000	OSU Political Science
<b>Total Optional Surveys (no F&amp;A)</b>	<b>\$291,000</b>	

\* Travel and lodging to two hearings in DC includes \$260 for train fare to DC, \$200 for hotel/lodging, and \$60 per day for two days for meals= \$580 per person per trip for three people.

\*\* Travel and lodging to one hearing in St. Louis includes \$500 airfare to St. Louis, 2 nights hotel/lodging at \$100, and \$60 per day for three days for meals= \$880 per person for three people.

\*\*\* Travel and lodging to five Briefings/Meetings with EAC includes \$260 for train fare to DC, \$200 for hotel/lodging, and \$60 for meals= \$520 per person per trip for two people.

\*\*\*\* Modified total direct cost is equivalent to total direct cost except for two items - F&A included only on first \$25K of subcontract with Project Director (\$79,500) and first \$25K of subcontract with OSU (\$84,744).



"Tom O'Neill"

01/17/2006 02:19 PM

To klynndyson@eac.gov

cc john.weingart@rutgers.edu

bcc

Subject December Progress Report

History:

This message has been replied to and forwarded

Karen,

Attached is our progress report for December. Still eager to learn the schedule for the completion of the review of our analysis and recommendations on provisional voting.

Tom O'Neill



Progress ReportDecemberTON.doc

024137





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EAGLETON INSTITUTE OF POLITICS

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*Contract to Provide Research Assistance to the EAC For  
the Development of Voluntary Guidance on Provisional  
Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT**  
**December 2005**

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

January 16, 2006

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

024138

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.7
  - Task 3.8
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from December 1 through December 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In December we continued to make progress in the research needed for the draft report on voter identification requirements. We completed a careful review of data on the effect of various voter id regimes on turnout and worked to reconcile that information other sources and identified the latest, most reliable information to use in the analysis.

We still await the EAC's comments on our Provisional Voting analysis paper, which included our recommendations to the EAC for best practices. Since the submission of our Provisional Voting report to the EAC on November 28, 2005, our efforts have been entirely aimed at the completion of the voter identification research. We have been advised that EAC will take several weeks to review and react to our final draft on provisional voting.

As a result of such unanticipated delays we have revised the schedule for the project. Early in this reporting period, we requested from EAC a no-cost extension of the contract through the end of February. At this point, we have extended the no-cost extension request through March, so that we will have adequate time to revise our report once we receive feedback from the EAC.

In the meantime, as we await a response from the EAC, we are moving ahead quickly on the statistical analysis of voter identification data and summarizing the legal research that was

completed earlier. We are working with the Peer Review Group to arrange a date for it to comment on the draft of the Voter ID analysis and recommendations.

This Monthly Progress Report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to [tom\\_oneill@verizon.net](mailto:tom_oneill@verizon.net) or by telephone at (908) 794-1030.

### **PROVISIONAL VOTING**

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Task 3.4 was completed in August, and Tasks 3.5 and 3.6 were completed in November. We await comments from EAC on the draft report.

#### **Task 3.6: Prepare preliminary draft guidance document.**

The report and recommendations which were sent to the EAC on November 28, 2005 recommends against the adoption of a guidance document per se and advises that the EAC adopt its recommendations as best practices. That recommendation followed agreement by the EAC with that course of action. The submission of that report and recommendations, however, constitutes the document required under this task. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we await the EAC's decision on how to proceed.

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is the principal focus of our research at this time.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** We have completed: the 50 state (plus D.C.) chart, the collection of voter identification statutes for all states and D.C., and summaries of the existing voter identification statutes. Moritz has completed its review of voter identification litigation and has summarized the results in a memo. Moritz and Eagleton have reviewed all research, clarified the categorization of that research on our charts, and reconciled the research categories used in the two different analyses.

**Challenges:** The biggest challenge in the reconciliation process is understanding the comparative strengths of different primary source materials. Despite the necessity this has created to reconcile conflicting data from time to time, the collaboration has strengthened the rigor of our efforts by shining a light on the raw data.

**Work Plan:** During January, we will continue our analysis of our voter identification research, and we will complete the memo summarizing the major litigation surrounding voter identification requirements. We will identify the most important issues and best practices in the area of voter identification, and to develop our voter identification document for the EAC.

### RESEARCH EFFORTS

To complement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of

HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

In the upcoming month, Eagleton will continue to examine and categorize voter registration forms across the states to see what forms of identification are requested from mail-in registrants in order to highlight how easily accessible states make information about voter identification. The difficulty will be determining the 2004 status of the states, especially because most of this material is gathered from state websites which at this point have been updated since 2004.

#### **VOTER ID AND TURNOUT ANALYSIS**

The statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters, as projected, was completed during the month of December.

**Description:** We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. In November, we have analyzed both aggregate- and individual-level data to determine whether there is any relationship between voter turnout and the various forms of voter identification states require.

**Progress:** During December, the analysis was completed for two data sets: County-level data that includes registration and turnout rates for 2000 and 2004, as well as Census measures and indicators of the type of voter identification requirements that were in existence at the time of the 2004 presidential election. The second data set consists of the voter supplement to the November 2004 Current Population Survey. This data set allows for testing of the same hypotheses at the individual level. The findings from the aggregate data set suggest that voter ID requirements have their greatest effect at the registration stage, as opposed to the turnout stage. A number of control variables were added to the analysis and the results of these efforts will be summarized in our report.

**Challenges:** These analyses use hierarchical linear modeling. Because voter identification requirements vary by state, one must pay special attention to other, unseen, state-level influences on the data. The models are difficult to run and interpret, so the analyses are time-consuming.

**Work Plan:** We will draft the findings from the statistical analyses by the end of January. The report will tie these findings to the research findings summarized in the litigation memos to create our first draft Voter Identification report.

## **PROJECT MANAGEMENT**

### **PEER REVIEW GROUP**

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

**Progress:** During the month of December, Eagleton contacted the PRG Members to reschedule the potential conference call session for mid-February due to the delays in getting the EAC's feedback on our report. We have asked the PRG members to reserve a couple of dates in mid-February for a conference call meeting to review the Provisional Voting report with the EAC's comments and the first draft of our Voter Identification Report.

**Challenges:** No new challenges were encountered during December.

### **COORDINATION AND INFORMATION MANAGEMENT**

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

### **INFORMATION SYSTEM**

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added. During December we rearranged the folders on the hard drive and created a master document detailing which folder each report, memo, or data source could be found in.

**Projections:** The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

## INTRANET

**Description:** All project team members have signed on to the Intranet site, and regularly post drafts, completed materials and spreadsheets online for internal review. The Intranet facilitates the exchange of information and collaboration among project participants.

## **FINANCIAL REPORT**

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project December 1- December 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.



"John Weingart"  
<john.weingart@rutgers.edu>

01/09/2006 03:26 PM

Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov

cc

bcc

Subject Re: No Cost Extension Request

History:

✉ This message has been replied to.

Karen - Just wanted to let you know that we're working on our response and should have it to you tomorrow or Wednesday at the latest. Thanks

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732) 932-9384, x.290

klynndyson@eac.gov wrote:

>  
> John-  
>  
> Attached please find a copy of a portion of the memo that is part of  
> the paperwork related to the no-cost extension.  
>  
> While I am the Contracting Officer Representative on this project, I  
> never received your project's cost proposal, and am unable to locate a  
> copy. Otherwise, I would have completed more of the chart.  
>  
> Please, take a moment to fill in the information on the attached  
> chart, and, if you could, have one of the Eagleton staff send me the  
> cost proposal which originally accompanied the technical proposal.  
>  
> Thanks so much.  
>  
> Regards-  
>  
> K  
>  
>  
>  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123

024145





"Tom O'Neill"  
<tom\_oneill@verizon.net>  
11/14/2005 05:27 PM

To klynndyson@eac.gov  
cc tokaji.1@osu.edu, foley.33@osu.edu,  
lauracw@columbus.rr.com, Vincelli@rutgers.edu,  
arapp@rci.rutgers.edu, davander@eden.rutgers.edu,  
bcc

Subject FW: October Progress Report

History:

This message has been forwarded.

Tom O'Neill

-----Original Message-----

**From:** Tom O'Neill [mailto:tom\_oneill@verizon.net]

**Sent:** Monday, November 14, 2005 5:26 PM

**To:** klynndyson@eac.gov

**Cc:** Vincelli@rutgers.edu; arapp@rci.rutgers.edu; davander@eden.rutgers.edu; dlinky@rci.rutgers.edu; ireed@rutgers.edu; joharris@eden.rutgers.edu; john.weingart@rutgers.edu; rmandel@rci.rutgers.edu; 'Johanna Dobrich'; tokaji.1@osu.edu; foley.33@osu.edu; lauracw@columbus.rr.com

**Subject:** October Progress Report

Karen,

Attached is the Progress Report for October. Please note that this report includes an attachment showing how our study classifies each state on key variables, such as counting out-of-precinct ballots, requirements for ballot evaluation, and other variables. It also displays how the data we used differs for some states for the vote counts reported by the Election Day Survey. We believe that our data is more accurate and complete (see for example the data for New Mexico and Pennsylvania).

I look forward to responding to any questions or concerns you or others at the EAC may have.

Tom O'Neill



OctoberFinal.doc

024146



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# EAGLETON INSTITUTE OF POLITICS

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*Contract to Provide Research Assistance to the EAC For  
the Development of Voluntary Guidance on Provisional  
Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT**  
**October 2005**

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

November 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

024147

## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.5
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from October 1 through October 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

In October we focused on finalizing our Provisional Voting analysis paper, including the development of recommendations to the EAC for a draft guidance document and best practices. These policy prescriptions are based on our research and the comments of the Peer Review Group. We completed a careful review of our data to reconcile it with other sources and identify the latest, most reliable information to use in the analysis. (See the attachment to this Progress Report for the details.) The importance of this demanding effort was described in September's Progress Report.

Also in October we revised the schedule for the project in light of the additional time that has been needed for review of earlier drafts by the EAC and the late completion of the Election Day Study. We will seek a meeting with the EAC in the next several weeks to confer about the schedule to complete the project and alternative approaches that could speed the conclusion of our work.

We will submit to the EAC a final draft of our report, a preliminary guidance document, and draft best practices before Thanksgiving. We project that EAC will take 3 to 4 weeks to review and react to that final draft. And we understand that after its review, the EAC will decide if it should move towards issuing a Guidance Document or recommending best practices. If the EAC does decide to issue a Guidance Document on Provisional Voting, the time needed for a review by the advisory boards is likely to delay a public hearing until early February.

This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to tom\_oneill@verizon.net or by telephone at (908) 794-1030.

### **PROVISIONAL VOTING**

Tasks 3.4 – 3.9 in our contract relate to Provisional Voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, Tasks 3.5 and 3.6 are nearing completion.

**Task 3.5: Analysis and Alternative Approaches. Assess the potential, problems, and challenges of Provisional Voting and develop alternative means to achieve the goals of Provisional Voting.**

### **LEGISLATION, REGULATIONS, AND LITIGATION**

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with Provisional Voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team has created a 50-state chart to summarize information on Provisional Voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and has completed this research.

**Progress:** We have completed the memorandum outlining Provisional Voting legislative changes since the 2004 election and we are continuing to clarify the laws prior to these changes.

**Challenges:** The variety in the form and frequency of Provisional Voting legislation from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The final analysis will be sent to the EAC by Thanksgiving.

## **PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING**

The Eagleton team has researched and compiled a narrative of each state's experience with Provisional Voting in 2004. The report findings from the survey of 400 local election officials are now complete. The survey results have proven to be instrumental in shaping our understanding of actual practice in administering Provisional Voting, including the steps local officials took to prepare for the election.

### **PROVISIONAL VOTING NARRATIVES**

**Description:** To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with Provisional Voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to Provisional Voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

**Progress:** We completed a state-by-state narrative of developments in Provisional Voting and distributed it to the EAC and the PRG. This work has been helpful in understanding the context of the data collected on provisional voting from the states.

**Challenges:** The primary obstacle to constructing the narratives was difficulty in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent several revisions to incorporate up-to-date and reliable information. Now that so many other analyses, including the Election Day Survey, have been released, we were challenged by different interpretations of the same basic facts. But the reconciliation of interpretation and data collection has been invaluable in establishing rigor in our report.

**Work Plan:** We completed revisions of the narratives incorporating comments from the PRG and addressing any discrepancies between our findings and other interpretations of similar information included in other studies.

### **PROVISIONAL VOTING STATISTICAL ANALYSIS**

**Description:** During October the Eagleton research team continued to check its statistical analysis, and worked to reconcile the classifications of this analysis (such as states counting only those provisional ballots cast within the proper precinct versus states that counted ballots cast within the proper county) with the classification made in other parts of this study or in other studies (such as the Election Day Study or *Electionline* reports).

**Progress:** The effort to double check all of the classifications used in the study is complete. The results of this effort are displayed in the attachment to this progress report, "Characteristics of the Provisional Voting Process -- Classification of the States,"

beginning on page 9. Only Delaware and Arkansas remain unclear in regard to one of the measures, and both states have been contacted to receive clarification in this area..

**Challenges:** The difficulties encountered have been a result of communication delays and time constraints. Some states have been more responsive to our inquires about their practices than others. Overall, this is not an irresolvable problem but it does slow the process of completion down.

**Work Plan:** By early-November the final revision of the statistical analysis, which includes full reconciliation of all data within the study, will be complete. The reconciliation of data is displayed in the attachment to this progress report.

### **SURVEY OF COUNTY ELECTION OFFICIALS**

**Description:** The Eagleton Center for Public Interest Polling (CPIP) conducted a national survey of county election officials to measure several aspects of Provisional Voting.

**Progress:** The analysis of the survey results and findings report is complete. As a result of the critique by the PRG, the research team is revising and clarifying the descriptions of the survey design and sample selection process to make the research methods more transparent.

**Work Plan:** We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5. We will include necessary clarifications regarding survey design and sample selection in the final analysis and alternatives document.

<b>Task 3.6: Prepare preliminary draft guidance document.</b>
---

The report and recommendations now nearing completion constitutes the draft preliminary guidance document. Based on our conversation with the EAC, the draft gives the EAC the option of proceeding with a guidance document or issuing recommendations to the state for best practices, recommendations that would not constitute voluntary guidance. Before proceeding to Task 3.7 (revise the guidance document for publication) or 3.8 (arrange a public hearing on the draft guidance), we will await the EAC's decision on how to proceed.

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of Provisional Voting, and is becoming the principal focus of our research.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** The 50 State (plus the District of Columbia) chart has been completed, the voter identification statutes have been collected for all states and D.C., and summaries of the existing voter identification statutes have been written for all states and D.C.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** Analysis of voter identification data has begun and will increasingly become the central focus of our work.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

## VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We have created a database and gathered statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election

**Progress:** The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also used exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout.

**Challenges:** The analysis of these data had been postponed until the data reconciliation of Provisional Voting is complete. As a result of the extensive revision and data reconciliation efforts aimed at the Provisional Voting section of our work VID had been temporarily placed on hold. We are now beginning data analysis on the impact of voter identification requirements on voter turnout.

**Work Plan:** The analysis of the impact that voter identification requirements have upon voter turnout should be completed by early December. Early January is our target to deliver the draft report and outline of alternative policies to the Peer Review Group. In mid January, the EAC would receive a draft report and recommendations that take into account the comments of the PRG.

## **PROJECT MANAGEMENT**

### PEER REVIEW GROUP

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). It reviews our research and methodology and provides valuable feedback and suggestions for the direction of our work.

**Progress:** Eagleton has stayed in touch with members of the Peer Review Group since the September 21<sup>st</sup> conference call, and has solicited their final comments on the Provisional Voting research. During October, we telephoned two members who did not participate in the conference call to confirm their commitment to serving as members of the Peer Review Group. Profess Guy Charles affirmed his interest. Professor Pamela Karlan did not return the call. The revisions in the schedule for the project have now made it possible to begin the process of scheduling a meeting of the PRG to consider our draft report and recommendations on Voter Identification Issues. We anticipate that meeting will take place the second week of January.



**Challenges:** No new challenges were encountered during October.

#### **COORDINATION AND INFORMATION MANAGEMENT**

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

#### **INFORMATION SYSTEM**

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding Provisional Voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. We have reorganized our system by separating final drafts from earlier versions of documents, discarding dated files contained in the Information System, and updating the system as a whole. Upon their completion, new documents continue to be added.

**Projections:** The entire project team continues to use the Information System which contains the above referenced research, in working toward the preparation for our final reports to the EAC.

#### **INTRANET**

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#### **FINANCIAL REPORT**

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A detail of expenses incurred from project October 1- October 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer at the EAC.

## **ATTACHMENT TO OCTOBER PROGRESS REPORT**

### **Characteristics of the Provisional Voting Process**

### **Classification of the States**

Our research on provisional voting divided the various states into several categories to allow an assessment of how different factors may have influenced the process of casting and counting provisional ballots. This analysis was conducted before the release of the Election Day Study, and the categories we used may differ in some respects from its work. The categories analyzed here are:

1. New vs. Old (states that used a provisional ballot before the 2004 election)
2. Use of a statewide database of registered voters vs. no use of a statewide database
3. Counting out-of-precinct ballots vs. not counting out-of-precinct ballots
4. Voter identification requirements
5. Method used to verify provisional ballots
6. Levels of provisional ballots cast and counted

We first assigned states within these categories based on classifications done by Electionline.org in its studies. The Electionline data was the only published information available at the time of our research. We reviewed the Electionline data carefully, and, in select cases, updated it with new, detailed information that had become available after its publication. The changes we made are explained below.

Please note that:

--Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming were excluded from our analysis. They have election-day registration systems, and did not need to use HAVA-compliant provisional ballots.

--North Dakota does not register voters, so it also was excluded from HAVA requirements and did not use provisional voting.

--Mississippi has not reported its provisional voting results and could not be included in our analysis, though it was compliant in 2004.

--Pennsylvania did not report its totals for the Election Day Study, but we obtained information on Pennsylvania and did include it in our analysis.

## New vs. Old States

We classified states as “new” or “old” based on the 2001 Electionline study of provisional voting<sup>1</sup> and condensing its classifications into a single dichotomous variable, new/old with all other cases excluded. The Electionline study divided states into five categories of their use of provisional ballots in the 2000 election:

1. Use of provisional ballots (P)
2. Limited use of provisional ballots (LP)
3. Affidavit ballots (A)
4. No system in place (N)
5. Unnecessary/Not Applicable (U/NA)

We collapsed all of the states listed as using provisional ballots, limited use of provisional ballots or affidavit ballots as “old” states, because the states in all three categories would have been familiar with key aspects of provisional voting.. States that had no provisional voting system in place for the 2002 election, and were HAVA compliant in 2004, were listed as “new” states, as 2004 would have been the first year in which they would be offering the option of provisional voting. States that were listed as unnecessary or not applicable were excluded from this study, as they were exempt from the HAVA regulations in 2004 because they either allowed same-day registration or did not register voters.

Rhode Island is the only state categorized as an old state by Electionline that we moved into the list of new states. Electionline’s map shows Rhode Island as a state that used provisional voting in 2000, but in the state description, it is listed as having no system in place. We learned from the Rhode Island Board of Elections that the state had previously permitted potential voters to sign an affidavit if they did not appear on a precinct’s list of registered voters, but felt they were registered to vote. Based on the signed affidavit, the election official would then contact a county official to see if the voter was on a more complete registration list. If the voter’s name was on the complete list, that voter was permitted to cast a regular ballot. As this process did not grant the voter a provisional ballot, but served as a different type of administrative failsafe, we concluded that Rhode Island’s first use of provisional voting was in 2004 and, therefore, classified the state as “new” to the system of provisional balloting.

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<sup>1</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Provisional%20Voting.pdf>.

<b>Table 1</b> <b>CATEGORIZATION OF STATES -- Old vs New</b>		
<b>Old States</b>	<b>New States</b>	<b>HAVA Exempt or NA</b>
Alaska	Connecticut	Idaho
Alabama	Delaware	Maine
Arkansas	Georgia	Minnesota
California	Hawaii	New Hampshire
Colorado	Illinois	North Dakota
DC	Indiana	Wisconsin
Florida	Louisiana	Wyoming
Iowa	Massachusetts	
Kansas	Missouri	
Kentucky	Montana	
Maryland	Nevada	
Michigan	Oklahoma	
Mississippi	Pennsylvania	
Nebraska	Rhode Island	
New Jersey	South Dakota	
New Mexico	Tennessee	
New York	Utah	
North Carolina	Vermont	
Ohio		
Oregon		
South Carolina		
Texas		
Virginia		
Washington		
West Virginia		
<b>26</b>	<b>18</b>	<b>7</b>

#### Statewide List of Registered Voters

The Electionline preview of the 2004 Election<sup>2</sup> was the starting point for compiling a list of states that had a statewide database of registered voters. That study listed 34 States that did not have their statewide database systems complete, and 16 that did, including the District of Columbia. North Dakota does not register voters, so does not need to compile such a database. Electionline's criterion for concluding that a state had a statewide list was that the state have participation from all jurisdictions in a statewide system. We added Oklahoma to the list of states with statewide databases

<sup>2</sup> "Election Preview 2004: What's changed, What Hasn't and Why". This study can be found at: <http://electionline.org/Portals/1/Publications/Election.preview.2004.report.final.update.pdf>

because we found they had met the Electionline criteria by the 2004 election, albeit too late for inclusion in the Electionline survey.

<b>Table 2 CATEGORIZATION OF STATES -- Statewide Registration Database</b>			
<b>Had Database 2004</b>	<b>No Database A-N</b>	<b>No Database N-W</b>	<b>HAVA Exempt or NA</b>
Alaska	Alabama	Ohio	Idaho
Arizona	Arkansas	Oregon	Maine
Connecticut	California	Pennsylvania	Mississippi
Delaware	Colorado	Rhode Island	Minnesota
District of Columbia	Florida	Tennessee	New Hampshire
Georgia	Iowa	Texas	North Dakota
Hawaii	Illinois	Utah	Wisconsin
Kentucky	Indiana	Vermont	Wyoming
Louisiana	Kansas	Virginia	
Massachusetts	Maryland	Washington	
Michigan	Missouri		
New Mexico	Montana		
Oklahoma	Nebraska		
South Carolina	Nevada		
South Dakota	New Jersey		
West Virginia	New York		
	North Carolina		
<b>16</b>	<b>27</b>		<b>8</b>

Minnesota has a statewide database but was excluded from the analysis because it did not offer provisional ballots and was exempt from the HAVA requirements.

#### Out-of-Precinct Ballots

We based our classification of states that allow the counting of ballots cast outside the correct precinct on the data in the 2004 Electionline preview of the 2004 election<sup>2</sup>. States that evaluated ballots cast in a precinct where the voter was not registered were categorized as “out-of-precinct.” States that invalidated such ballots were categorized as “In-precinct only.”

<b>Table 3 CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots</b>		
<b>Out-of-Precinct</b>	<b>In-Precinct Only</b>	<b>HAVA EXEMPT OR NA</b>
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Delaware	Connecticut	New Hampshire
Georgia	District of Columbia	North Dakota
Illinois	Florida	Wisconsin
Kansas	Hawaii	Wyoming
Louisiana	Indiana	
Maryland	Iowa	
New Mexico	Kentucky	
North Carolina	Massachusetts	
Oregon	Michigan	
Pennsylvania	Missouri	
Rhode Island	Montana	
Utah	Nebraska	
Vermont	Nevada	
Washington	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
<b>17</b>	<b>26</b>	<b>7</b>

### **Voter Identification**

We relied on Electionline studies, including the Voter Identification study<sup>3</sup> and the 2004 Election Preview, to classify the states on their requirements for voter identification. Each state's categorization is taken directly from the Electionline studies except Hawaii.<sup>4</sup> The five different, and increasingly rigorous, categories are: Give Name (8 states), Sign Name (14 states), Match Signature (8 states), Provide ID (15 states), and Photo ID (5 states).

<sup>3</sup> This study can be found at: <http://electionline.org/Portals/1/Publications/Voter%20Identification.pdf>

<sup>4</sup> In 2004, ElectionLine listed Hawaii as requiring identification. Our review of statutes revealed that Hawaii could require photo ID. Since that is the most rigorous form of identification that may be required of voters, we classified Hawaii under this category.

**Table 4****CATEGORIZATION OF STATES -- Forms of Identification Required**

*States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.*

<b>Give Name</b>	<b>Sign Name</b>	<b>Match Signature</b>	<b>Provide ID</b>	<b>Photo ID</b>
<i>Maine</i>	California	Illinois	Alabama	Florida
Massachusetts	DC	Nevada	Alaska	Hawaii
<i>New Hampshire</i>	<i>Idaho</i>	New Jersey	Arizona	Louisiana
North Carolina	Indiana	New York	Arkansas	South Carolina
Rhode Island	Iowa	Ohio	Colorado	South Dakota
Utah	Kansas	Oregon	Connecticut	
Vermont	Maryland	Pennsylvania	Delaware	
<i>Wisconsin</i>	Michigan	West Virginia	Georgia	
<i>Wyoming</i>	Minnesota		Kentucky	
	<i>Mississippi</i>		Missouri	
	Nebraska		Montana	
	New Mexico		<i>North Dakota</i>	
	Oklahoma		Tennessee	
	Washington		Texas	
			Virginia	
<b>9</b>	<b>14</b>	<b>8</b>	<b>15</b>	<b>5</b>

South Dakota complicates the effort to assign each state to a category. It permits voters to sign an affidavit that would allow them to vote without presenting photo ID. While Hawaii did not normally require photo ID, its statutes gave challenged voters the opportunity to respond by producing a photo ID.

#### Verification Method

We identified four different ways states assessed provisional ballots to determine if they should be counted: signature match, match voter data, signed affidavits, and bringing back identification later. We gathered information about these verification techniques by checking state websites and consulting journalistic accounts. We consulted state legislation to provide further information where needed.

**Table 5****CATEGORIZATION OF STATES – Ballot Evaluation Methods**

*States in italics are exempt from HAVA or did not report Provisional Ballot data and are not included in the analysis.*

<b>Signature Match</b>	<b>Data Match</b>	<b>Affidavit</b>	<b>Return with ID</b>	<b>NA</b>
Alaska	Alabama	Connecticut	Indiana	Idaho
California	Arizona	Delaware	Iowa	Maine
Florida	Arkansas	Georgia	Kansas	Mississippi
Oregon	Colorado	Hawaii	Maryland	Minnesota
	DC	Illinois	Michigan	New Hampshire
	Louisiana	Kentucky	Montana	N. Carolina*
	Missouri	Massachusetts	New Jersey	N. Dakota
	Ohio	Nebraska	New Mexico	Wisconsin
	Oklahoma	Nevada	Texas	Wyoming
	Pennsylvania	New York	Utah	
	Rhode Island	South Dakota		
	S. Carolina	Tennessee		
	Washington	Vermont		
	West Virginia	Virginia		
4	14	14	10	9

**Data Collection**

To assemble our data for analysis, we began by using the data on provisional votes cast and counted reported by Electionline. To increase the accuracy of this data, we surveyed each state's election websites for updated data, and for reported numbers on the county level. We then sent emails to 49 (we excluded Alaska, see below) states and the District of Columbia, requesting updated data on the number of provisional votes cast and counted by county. We received information from 25 states by our cut-off date of August 25, 2005.

---

\* North Carolina lacked clear standards to evaluate provisional ballots and is excluded from this analysis.



<b>Table 6</b>	
<b>Updated information by State</b>	
<b>Received Updated Data</b>	<b>Did Not Receive Updated Data</b>
California	Alabama
District of Columbia	Alaska <sup>5</sup>
Florida	Arizona
Hawaii	Arkansas
Indiana	Colorado
Iowa	Connecticut
Kansas	Delaware
Louisiana	Georgia
Maryland <sup>6</sup>	Idaho
Missouri	Illinois
Montana	Kentucky
Nebraska <sup>7</sup>	Maine
Nevada	Massachusetts
New Jersey	Michigan
New Mexico	Minnesota
Ohio	Mississippi
Oklahoma	New Hampshire
Oregon	New York
Pennsylvania	North Carolina
Rhode Island	North Dakota
South Dakota	South Carolina
Tennessee	Utah
Texas	Vermont
Virginia	Wisconsin
Washington	Wyoming
West Virginia	
<b>26 States</b>	<b>25 States</b>

<sup>5</sup> Alaska was not contacted via email, as the state does not have voting districts comparable to counties in other states and could not be matched with comparable census data.

<sup>6</sup> Maryland reported provisional ballots that were counted per county, but not number cast.

<sup>7</sup> Nebraska reported an incomplete list of provisional ballots cast and counted by county, but designated counties by number, rather than by name.

## Data Differences with Election Day Study

The data used in this study differs from the data reported in the Election Day Study for 19 states. The Election Day Study was not completed until well after our statistical analysis of provisional voting was finished, on the schedule laid out in our work plan. Where there are differences, they are typically very small, usually fewer than 100 votes either cast or counted. Of the 9 states that have differences of more than 100 votes cast or counted, 7 have reported their numbers directly to us and can be considered updated data that EDS had not obtained. For one of those states, New Mexico, EDS had incomplete data, and for another, Pennsylvania, EDS had no data at all. The data that we have collected reflects updated numbers from the states that have changed following recounts and litigation that altered how ballots were evaluated.

State	EDS Numbers Cast/Counted	Our Numbers Cast/Counted	Differences	Updated Info from State?
Alabama	6,478/1,865	6560/1836	82/29	No
Alaska	23,285/22,498	23,275/22,498	10/0	No
Colorado	51,529/39,086	51,477/39,163	52/77	No
Georgia	12,893/4,489	12,893/3,839	0/650	No
Hawaii	346/25	348/25	2/0	Yes
Iowa	15,406/8,038	15,454/8,048	48/10	Yes
Kansas	45,535/32,079	45,563/31,805	28/274	Yes
Montana	688/378	653/357	35/21	Yes
Nebraska	17,421/13,788	17,003/13,298	418/490	Yes
Nevada	6,153/2,446	6,154/2,447	1/1	Yes
New Mexico	6,410/2,914	15,360/8,767	8,950/5,853	Yes
N. Carolina	77,469/50,370	77,469/42,348	0/8,022	No
Ohio	157,714/123,902	158,642/123,548	928/354	Yes
Pennsylvania	No data	53,698/26,092	N/A	Yes
Texas	35,282/7,156	36,193/7,770	911/614	Yes
Vermont	121/30	101/37	20/7	No
Virginia	4,608/728	4,609/728	1/0	Yes
Washington	92,402/73,806	86,239/69,273	6,163/4,533	Yes
Wisconsin	374/119	373/120	1/1	No



"John Weingart"  
<john.weingart@rutgers.edu>

09/28/2005 04:01 PM

Please respond to  
john.weingart@rutgers.edu

To klynndyson@eac.gov

cc

bcc

Subject Re: EAC Conference Call - Friday 9/30

History:

✉ This message has been replied to and forwarded.

Karen - For our conference call this Friday at 1:30, participants should dial (877) 805-0964 and then when prompted enter: 869580#. Could you relay this information to Commissioner Martinez and the others from the EAC who will be on the call. At our end will be Tom O'Neill, Ingrid Reed and me.

Thanks, John

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732) 932-9384, x.290

klynndyson@eac.gov wrote:

>  
> Excellent-  
>  
> Friday at 1:30 it is.  
>  
> Please do let the EAC staff know what number to call. Ray Martinez  
> and Tom Wilkey may be calling from the road. Julie Thompson and I  
> will be here.  
>  
> Thanks, again  
>  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123  
>  
>  
>  
> \*"John Weingart" <john.weingart@rutgers.edu>\*  
>  
> 09/27/2005 03:56 PM  
> Please respond to  
> john.weingart@rutgers.edu  
>  
>  
>  
> To  
> klynndyson@eac.gov  
> cc  
> Vincelli@rutgers.edu, jthompson@eac.gov, aambrogi@eac.gov,  
> rmartinez@eac.gov, twilkey@eac.gov, arapp@rutgers.edu,

024164

> davander@eden.rutgers.edu, dlinky@rci.rutgers.edu, foley.33@osu.edu,  
> ireed@rutgers.edu, iwreed@aol.com, joharris@eden.rutgers.edu,  
> lauracw@columbus.rr.com, rmandel@rci.rutgers.edu, sampson.8@osu.edu,  
> tokaji.1@osu.edu, "'Tom O'Neill'" <tom\_oneill@verizon.net>,  
> vincelli@rci.rutgers.edu, williams.285@osu.edu  
> Subject  
> Re: EAC Conference Call - Friday 9/30  
>  
>  
>  
>  
>  
>  
>  
>  
>  
> Karen - Let's do it on Friday at 1:30. From my initial polling, at least  
> Tom O'Neill, Ingrid Reed and I will be available. Since we will not all  
> be at the same location, would you like us to initiate a conference call  
> from here and give you a number to call in to?  
>  
> -- John Weingart, Associate Director  
> Eagleton Institute of Politics  
> (732) 932-9384, x.290  
>  
>  
>  
>  
> klynndyson@eac.gov wrote:  
>  
>  
> > Eagleton/Moritz team-  
> >  
> > I'd leek to propose a conference call with EAC Commissioner Martinez,  
> > General Counsel ,Julie Thompson, Research Manager Karen Lynn-Dyson and  
> > your team for either \*10:30 or 1:30 on Friday, September 30\*.  
> >  
> > This will be to discuss the draft guidance and final report you will  
> > be producing for the EAC.  
> >  
> > Please let me know which time works for you  
> >  
> > Regards  
> > Karen Lynn-Dyson  
> > Research Manager  
> > U.S. Election Assistance Commission  
> > 1225 New York Avenue , NW Suite 1100  
> > Washington, DC 20005  
> > tel:202-566-3123  
>  
>  
>

Thomas R. Wilkey/EAC/GOV  
09/26/2005 06:14 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Paul  
cc Juliet E. Thompson/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
bcc

Subject Eagleton Draft

We have received and are in the process of reviewing a draft of the Eagleton Report.  
This is to be considered an internal working document and should not be released to anyone without the approval of the Commissioners.

Thank You  
Tom Wilkey

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

024166



Sheila A. Banks/EAC/GOV

09/20/2005 01:57 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Eagleton Meeting With The Chair

Karen,

The Chair said it's your call as far as you and Tom meeting with her today. Please let me know. Tom is available around 3:30 p.m.

Thanks,  
Sheila

024167



"Lauren Vincelli"  
<Vincelli@rutgers.edu>

09/15/2005 12:04 PM

Please respond to  
Vincelli@rutgers.edu

To klynndyson@eac.gov

cc tom\_oneill@verizon.net, jdobrich@eden.rutgers.edu

bcc

Subject August Progress Report - Eagleton Institute of Politics

History:

This message has been forwarded.

Hi Karen,

Attached is the August progress report in fulfillment of our Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures. Please note, as per your instructions earlier this month, that the financial report will be sent via Fedex under separate cover to: Ms. Dianna Scott, Administrative Officer, EAC. Also attached to the progress report is a finalized list of our Peer Review Group members. If you have any questions regarding this report, please contact Tom O'Neill at (908) 794-1030 or [tom\\_oneill@verizon.net](mailto:tom_oneill@verizon.net).

Have a great day,  
Lauren Vincelli

Lauren Vincelli  
Business Assistant, Eagleton Center for Public Interest Polling  
Eagleton Institute of Politics, Rutgers University  
Carriage House, 185 Ryders Lane  
New Brunswick, NJ 08901  
Phone: (732) 932-9384, ext. 237  
Fax: (732) 932-1551



Progress Report\_AUGUST2005\_EagletonInst.pdf



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EAGLETON INSTITUTE OF POLITICS

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*Contract to Provide Research Assistance to The EAC  
For the Development of Voluntary Guidance on  
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT  
AUGUST 2005**

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

September 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557



## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.5
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from August 1 through August 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

Research on Provisional Voting and a draft of reports on the analysis and alternatives were substantially completed in preparation for the September 6 briefing for the EAC. Important reports such as the National Survey of Local Election Officials' Experience with Provisional Voting; Statistical Review Provisional Voting in the 2004 Election; State-by-state Narrative of Developments in Provisional Voting; and the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states, were all completed in August.

We made further progress on recruiting a balanced and authoritative Peer Review Group (which, as this report is written, is receiving all the documents listed above for review). Ingrid Reed of Eagleton will coordinate the work of the Peer Review Group. A list of the members of the Peer Review Group is attached.

This report is divided into 3 sections: Provisional Voting, Voter Identification Requirements, and Project Management. Each section references specific tasks described in paragraph 3 of the contract. The Financial Report will be sent separately by the Rutgers Division of Grant and Contract Accounting.

Please direct questions or comments about this report to Tom O'Neill at:

[REDACTED]

## PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed in August, and Task 3.5 is well underway.

**Task 3.5: Analysis and Alternative Approaches.** Assess the potential, problems, and challenges of provisional voting and develop alternative means to achieve the goals of provisional voting.

## LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It has provided a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting and is near completion with this research.

**Progress:** We completed the state by state summaries of provisional voting in August. Also complete is a memorandum outlining provisional voting legislative changes since the 2004 election. This material was sent to the EAC as part of the package for briefing on September 6.

**Challenges:** The variety in the form and frequency of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The analysis of all the information, data, and survey results concerning provisional voting data will be completed in September, on schedule. The alternatives document should also be complete in September, pending response from the EAC on which direction those alternatives should follow.

## PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. The report findings from the survey of 400 local election officials is now complete. The survey results improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

### **PROVISIONAL VOTING NARRATIVES**

**Description:** To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

**Progress:** A state-by-state narrative of developments in Provisional Voting is complete and has been distributed to the EAC and the Peer Review Group. This work has been crucial to the process of constructing our draft analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

**Challenges:** The primary obstacle to constructing the narratives was difficulty in communicating and obtaining necessary information from various state officials. As a result, the narratives underwent multiple revisions in order to incorporate the most up-to-date material available. Had the Election Day Study been available, this task would probably have been simplified considerably.

**Work Plan:** We completed revisions of the narratives.

### **SURVEY OF COUNTY ELECTION OFFICIALS**

**Description:** The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting.

**Progress:** The analysis of the survey results and findings report are complete.

**Work Plan:** We used the information from the survey in drafting the analysis and alternatives document required under Task 3.5.

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting, and is becoming the principal focus of our research.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. This collection of material is nearing completion. It will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** We are refining the 50 state (plus District of Columbia) chart of data on voter identification. So far collected are voter identification statutes for 35 states. Summaries of the existing voter identification statutes have been written for forty states.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The state by state voter identification statute summaries will be completed for the remaining ten states and D.C. and the review of the chart will be completed. Analysis of voter identification data will begin.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of different voter ID regimes. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern, and a sharp political debate over rigorous identification requirements for all voters. The research follows these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with

increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

#### **VOTER ID AND TURNOUT ANALYSIS**

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

**Progress:** The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. We have also utilized exit poll data collected on Election Day 2004 as a resource for understanding the demographics of voter turnout. The analysis of that data is underway.

**Challenges:** The main challenges to this task include gathering the complete set of changes to Voter ID laws over the past 5 years, and then incorporating those changes into a sound statistical methodology.

**Projection:** We will continue to work towards resolving the methodology issue, and ultimately produce a final report on this subject. The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-September.

## **PROJECT MANAGEMENT**

### **PEER REVIEW GROUP**

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). The Peer Review Group will review our research and methodology and provide valuable feedback and suggestions for the direction of our work.

**Progress:** The composition of the Peer Review Group has been determined and the membership has been submitted to the EAC. Additionally, as of the date of this report all PRG members have received their first mailing, which included several reports from our research, and a draft of our analysis and alternatives outline for their review.

**Challenges:** Our timeline for circulating and discussing our research with the PRG has been compromised due to delays in completing the recruitment of members of the group.

**Projections:** We are in the process of scheduling our first conference call with PRG members for the week of Sept. 19, 2005.

### **COORDINATION AND INFORMATION MANAGEMENT**

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

#### **INFORMATION SYSTEM**

**Description:** The statutory data and reports prepared by the Moritz College of Law is being merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

**Progress:** At this point in the research process, many documents are complete after a lengthy process of circulating drafts among team members. As we near the end of the Provisional Voting research and move into the Voter Identification research, we will re-evaluate the volume of files contained in the Information System and update the system.

**Projections:** The entire project team continues to review all project drafts, and will staff members combine and format all documents and materials in preparation for our final reporting to the EAC.

#### **INTRANET**

**Description:** All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

**Progress:** Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.

#### **FINANCIAL REPORT**

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project August 1 - August 31, 2005, will be sent under separate cover to: Ms. Dianna Scott, Administrative Officer, EAC .

**ATTACHMENT:  
PEER REVIEW GROUP  
FINAL LIST (09/13/05)**

**R. Michael Alvarez**

Professor of Political Science  
California Institute of Technology  
1200 East California Institute of Technology  
Mail box 228-77  
Pasadena, CA 91125  
[rma@hss.caltech.edu](mailto:rma@hss.caltech.edu)  
Tel: (626)395-4422

**Guy-Uriel E. Charles**

Associate Professor  
School of Law, University of Minnesota  
342 Mondale Hall  
229-19<sup>th</sup> Avenue South  
Minneapolis, MN 55455  
[gcharles@umn.edu](mailto:gcharles@umn.edu)  
Tel: (612)626-9154

**John C. Harrison**

Massee Professor of Law  
University of Virginia School of Law  
580 Massie Road  
Charlottesville, Virginia 22903-7789  
[Jh8m@virginia.edu](mailto:Jh8m@virginia.edu)  
Tel: (434) 924-3093

**Pamela Susan Karlan**

Montgomery Professor of Public Interest Law  
Stanford Law School  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
[karlan@stanford.edu](mailto:karlan@stanford.edu)  
Tel: (650) 725-4851

**Martha E. Kropf**

Assistant Professor of Political Science  
University of Missouri-Kansas City  
Political Science Department  
5120 Rock Hill Road, 213 Haag Hall  
Kansas City, Missouri 64110-2499  
[KropfM@umkc.edu](mailto:KropfM@umkc.edu)  
Tel: (816) 235-5948

**Daniel H. Lowenstein**

Professor of Law  
School of Law, UCLA  
Box 951476  
Los Angeles, CA 90095-1476  
[lowenste@law.ucla.edu](mailto:lowenste@law.ucla.edu)  
Tel: (310) 825-4841

**Timothy G. O'Rourke**

Dean, Fulton School of Liberal Arts  
Salisbury University  
1101 Camden Avenue  
Fulton Hall - 225  
Salisbury, MD 21804  
[tgorourke@salisbury.edu](mailto:tgorourke@salisbury.edu)  
Tel: (410) 543-6000

**Bradley A. Smith**

Professor  
Capital Law School  
303 East Broad Street  
Columbus, OH 43215  
[bsmith@law.capital.edu](mailto:bsmith@law.capital.edu)  
Tel: (614) 236-6500

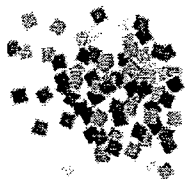
**Tim Storey**

Program Principal  
National Conference on State Legislatures  
7700 East 1<sup>st</sup> Place  
Denver, CO 80230  
Tel: (303) 364-7700 or  
Tel: (202) 624-5400

**Peter G. Verniero**

Counsel  
Sills, Cummins, Epstein and Gross, PC  
One Riverfront Plaza  
Newark, NJ 07102  
[REDACTED]  
Tel: (973) 643-7000





Amie J. Sherrill/EAC/GOV  
09/14/2005 02:14 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc

Subject Re: Item for tomorrow- Eagleton's request for 4C's input on  
Alternative Next Steps

History:

✉ This message has been replied to.

Will do. What topic do you want me to use on the agenda?

Amie J. Sherrill  
Special Assistant to Vice Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106  
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV  
09/14/2005 02:12 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC  
Subject Re: Item for tomorrow- Eagleton's request for 4C's input on  
Alternative Next Steps

So, Aimee, guess you should put copies in the 4C's packets.

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV  
09/14/2005 02:02 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC  
Subject Re: Item for tomorrow- Eagleton's request for 4C's input on  
Alternative Next Steps

Yes

Thomas R. Wilkey

024178

Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov  
Karen Lynn-Dyson/EAC/GOV

Karen Lynn-Dyson/EAC/GOV

09/14/2005 12:53 PM

To Amie J. Sherrill/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC

cc

Subject Item for tomorrow- Eagleton's request for 4C's input on  
Alternative Next Steps

Tom-

Do you want this as an agenda item?

Aimee-

Will leave a copy of the document on top of your desk.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

024179



"Tom O'Neill"

09/05/2005 10:48 PM

To klynndyson@eac.gov

cc

bcc

Subject Materials for Sept. 6 Meeting

History:

This message has been forwarded.

Karen:

Attached are 3 documents that will be topics of discussion at our meeting tomorrow. The Power Point presentation is included so you will have a complete file (and as a backup in case something goes wrong with the version I am bringing.)

The "Script" document is a simple, MS Word version of the Power Point presentation. You might want to print out copies for those who would like to follow along and make notes on the slides as they are discussed.

The third document is the "Alternatives" paper we will discuss after the Power Point presentation. It outlines alternative points that might be included in the preliminary guidance document, which is the next deliverable in the project. We hope to learn which alternatives are preferred by the EAC so that we will know which ones should be developed further for the Preliminary Guidance Document. I hope you might be able to have this duplicated and distributed to those attending the meeting.

Thanks. I look forward to seeing you tomorrow.

Tom O'Neill



ALTERNATIVESSept6.doc



Briefing90605.ppt



ScriptSept.605.doc

024180



"Tom O'Neill"

09/03/2005 02:46 PM

To klynndyson@eac.gov

cc

bcc

Subject Revised materials for Sept. 6 Meeting

History:

✉ This message has been replied to and forwarded.

Karen,

The hard copy of the materials you received on Friday may have been missing the response to Question 4 (the copy I received did not include it). Several other typographical and other errors also became apparent when I reviewed it today.

Attached is a revised version of the package that corrects those errors. Please rely on this version to prepare for the meeting on Tuesday. I will bring sufficient copies to hand out before the meeting.

Sorry for the errors.

Tom O'Neill



EAC BRIEFING0906.doc

024181



"Tom O'Neill"

08/31/2005 02:42 PM

To klynndyson@eac.gov

cc

bcc

Subject September 6 Meeting

Karen,

As we discussed in our phone call earlier today, I will have a PowerPoint presentation for use at our meeting next Tuesday. I hope it will be possible for you to arrange for a projector and a computer with a USB port for our use that day. Have a good Labor Day weekend. See you at 1:30 on the 6<sup>th</sup>.

Tom O'Neill

024182

## OUTLINE OF ALTERNATIVES

For Consideration In Drafting Preliminary Guidance on Provisional Voting  
September 6, 2005

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This outline identifies 7 areas where guidance from EAC could improve the provisional voting process.

EAC's guidance should strike a rational balance among the three competing objectives of ballot access, ballot security, and procedural reliability and practicality. The outline sketches a range of alternatives for the EAC. Based on the EAC's judgment about which alternatives it can embrace, we will develop appropriate recommendations for the guidance document.

### Possible Criteria for evaluating alternatives and choosing among alternatives:

1. The electoral system must be able to collect, record, and tally the votes of the electorate with sufficient accuracy to declare a winning candidate whose victory is procedurally legitimate in the eyes of supporters and opponents alike. Second, no well-functioning electoral system would fail to provide or count a ballot cast by a properly registered voter who correctly completed all steps required to receive one. (Century Foundation/10)
2. Margin of Litigation – need a system robust enough to perform well under the pressure of a close election.
3. Enfranchisement rate –the percentage of eligible voters who are able to participate.
4. Voter satisfaction standard – degree to which voters believe the system meets their needs and provides an avenue of participation.

### Elements influencing the performance of the provisional voting system

#### THE PROCESS

- A. Registration
- B. Pre-Election Information For Voters
- C. At The Polling Place
- D. Evaluating The Ballot
- E. Post-Election Information For Voters

#### BROADER CONSIDERATIONS

- F. Integrity And The Appearance Of Integrity
- G. Continuous Assessment Of The Provisional Ballot – Process And Performance (Quality Improvement Model)

# DRAFT

## **INTRODUCTION**

### **THE IMPORTANCE OF CLARITY AND IDENTIFICATION OF BEST PRACTICES**

The guidance document should emphasize above all else the importance of clarity in the rules governing every stage and process of provisional voting. As the Century Foundation's recent report observed, "Close elections increasingly may be settled in part by the evaluating and counting of provisional ballots. . . To avoid post election disputes over provisional ballots—disputes that will diminish public confidence in the accuracy and legitimacy of the result well in advance of the election, states should establish, announce, and publicize clear statewide standards for every aspect of the provisional ballot process, from who is entitled to receive a provisional ballot to which ones are counted."

State efforts to improve the provisional voting process are already underway. Those states, as well as others that have not yet begun to correct shortcomings that became apparent in 2004, can benefit from guidance that includes concrete descriptions of best practices. A best practice approach in the guidance document is likely to advance the adoption of provisional voting practices that should be standard across the country while recognizing diversity among the states.

### **ALTERNATIVES FOR EACH STEP IN THE PROCESS**

#### **A. Registration**

Improving the registration system can forestall the need to cast a provisional ballot, and is therefore among the most important possible reforms.

1. Registration rules should be clear and to forestall post-election disputes about their interpretation.
2. If states require identification at the time of registration, the kind of IDs required should be stated precisely, in plain English, and be publicly available in a graphical form that all voters can understand, for example, "You must bring your driver's license. If you don't have a driver's license, then you must bring an ID card with your photograph on it and this ID card must be issued by a government agency."
3. If there is one place to sign an affirmation of citizenship and age (and/or mental capacity), and that is signed, the failure to check any box that refers to the aforementioned should not be deemed a material omission.
4. States should consider testing a modified system of voter registration. A voter who registers earlier than 60 days before Election Day would be guaranteed that administrators will . That voter will be able to vote by regular ballot. For those who register within 30 days of the election, administrators would still be expected to ensure the orderly processing of the registration, but such voters will not be guaranteed that if there is a problem with their application that they will be able to vote by a regular ballot. This two-tiered registration system could reduce post-election disputes.<sup>1</sup>

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<sup>1</sup> See: <http://moritzlaw.osu.edu/electionlaw/comments/2005/comment0322.html>. This suggestion relates directly to California's experience after shortening the deadline for registration to 15 days from 29, which contributed to the state's overwhelming reliance on provisional ballots. Had the election in California been close, the contention over provisional ballots could have been destabilizing.

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5. States should issue a receipt with a tracking number to each person submitting a registration form. The tracking number will allow the voter to check on registration status through the use of that number and a publicly available registration list. The receipt could serve as an "admission ticket" to a regular ballot, even if the voter's name was not on the poll worker's list.<sup>2</sup>
6. States should have clear rules with respect to whether registration forms collected by third parties are processed as mail-in or in-person registrations.
7. Registration forms submitted by third-party groups should be considered mail-in registrations subject to those ID requirements. But if giving a registration form to a third-party group is considered equivalent to giving the form to a Board of Elections, or DMV, official then the law should say so explicitly.
8. The re-enfranchisement process should be clear and straightforward. To avoid litigation over the registration status of felons, best practice should be defined as making re-enfranchisement automatic or no more burdensome than the process required for any new registrant.<sup>3</sup>
9. A provisional ballot should seek from the voter all the information necessary to constitute registration and be filed by local officials with the proper office to complete the registration process.

### B. Pre-Election Information For Voters

The better voters understand their rights and obligations, the easier the system will be to manage and the more legitimate the appearance of the process.

1. A state website for voters should offer full, clear information on boundaries of precincts, location of polling places, requirements for identification, and other necessary guidance that will facilitate the casting of a regular ballot.
2. This same information should be included on sample ballots
3. Publish this information shortly before the election in prominent newspaper announcements and, if feasible, through broadcast media.

### C. At the Polling Place

Avoiding error at the polling place will allow more voters to cast a regular ballot.

1. The organization of the polling place, particularly the multi-precinct polling place is important. Guidance should provide best practices on the importance of greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and relation topics.

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<sup>2</sup>There could be two different kinds of receipts: one would be simply confirm that an individual submitted a registration form by the required deadline; the other, more robust, would confirm that the voter was officially registered

<sup>3</sup> From The Century Foundation Report



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2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting.
3. Offer a best practice on estimating the number of provisional ballots that should be made available at each precinct, so that they don't run out on Election Day
4. Offer a best practice on the handling of provisional ballots between the time they are cast to when they are examined afterward
5. Offer best practices in training and scripting poll workers so that they ask the right questions, offer the right information, and make provisional ballots available appropriately – particularly important when a voter shows up at the wrong precinct.

### D. Evaluating the Ballot

The clarity of criteria is critical to a sound evaluation process and to the legitimacy of the system as a whole.

1. The experience in 2004 in North Carolina, Washington, Ohio underline the importance of clarity in the criteria to be used in deciding if a provisional ballot should be counted. Rushed litigation over the evaluation of provisional ballitng could erode the legitimacy of a presidential election. As the Century Foundation report put it, "Whatever procedures the states choose [to determine if a provisional ballot should be counted], the paramount consideration—as with all others concerning provisional voting—is that they be clear and thus not susceptible to post-election manipulation and litigation." Nonetheless, the NY *Panio v. Sutherland* case shows the difficulty of defining the range of administrative errors from which the provisional voters should be held harmless. Even when the standard is "clerical error" judges can differ over what that means exactly. Possibly a state law might be able to clarify a definition by giving examples of clerical errors, but even then the definition is unlikely to be perfect.
2. Recent legislation in Arizona indicates that this guidance should reiterate HAVA's requirement that persons appearing claiming to be registered voters cannot be denied a ballot because they do not have identification with them.
3. Voters who lack ID should have up to three days to provide either the HAVA-specified forms of ID or other documentation that will facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered by mail. This research has shown that voters seem to feel returning with ID is less onerous than signing an affidavit.
4. More provisional voters are enfranchised in those states that count ballots cast outside the correct precinct. The best practice may be to define "jurisdiction" more broadly than the precinct. Or, more modestly, If a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count as long as the voter appears at the correct polling site.<sup>4</sup>

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<sup>4</sup> Chances are administrative error accounts for the voter being directed to the wrong precinct under these circumstances.

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5. The best practice for election officials to evaluate a provisional ballot includes a check of existing records, including the original registration form, in order to match signatures.
6. Public confidence in the process of evaluating and counting provisional ballots requires that the process be open to the public and conducted by a team of election officials whose decision will be reviewed by a Board of Elections (or similar body) if the decisions was not unanimous.
7. Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected (e.g., check the applicable box "unregistered voter"; "lack of signature match" "wrong precinct," etc.) Those forms should be disclosed publicly when completed.
8. The standards used for eligibility of provisional voters should be made clear in state law that specifies the "burden of proof" to be met. For example, a provisional ballot will not be rejected unless officials find *by clear and convincing evidence* that voter is ineligible; or provisional ballot will not be counted unless all available evidence shows that voter *more likely than not* is eligible
9. Clear standards are needed for the essential information that must be appear on provisional ballot envelope: name, address, signature, etc. The standards should indicate that a provisional ballot does not count if it lacks this information. The standards should provide voters a reasonable opportunity provide the missing information. (For example, election officials have no duty to inform the voter of the error, but if voters appear at the Board of Elections within 72 hours on their own initiative they can supply the missing info.)
10. Sates that use the information on the provisional ballot to permit voters whohave changed their addresses to update their registrations, should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections
11. The time by which election officials must complete their eligibility evaluations is critical, particularly in presidential elections. The guidance document should specify a range of time periods as a best practice (for example: 7 days, 10 days, 14 days, 21 days).

### F. Post-election Information for Voters

Timely information for voters provides a final quality control on the system by giving the voter an opportunity to correct mistakes that may cause a legitimate ballot not to be counted.

1. Recommend best practices to improve the use of websites, phone lines, or mail to inform provisional voters about the evaluation of their ballots. The date by which this occurs is critical if voters are to have a reasonable opportunity to correct errors.
2. Specify the administrative review procedures, if any, that are available to a voter who has been told that her provisional ballot was rejected. May she appeal to a higher administrative authority? if so, under what timetable? What evidence may she offer in an effort to demonstrate eligibility?

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### G. State Laws Governing Litigation Over Provisional Voting

1. State law could foreclose litigation where the purpose is to change the outcome of the election, but a better option appears below.
2. Provide for expedited, streamlined litigation – administrative decisions regarding the eligibility of provisional ballots can be overturned only if *clearly erroneous* based on documentary evidence or a violation of the clearly specified procedures concerning the processing of such ballots
3. Establish special, streamlined litigation procedures for Election Day complaints that individuals are being denied the right to cast a provisional ballot

### BROADER CONSIDERATIONS

#### H. Integrity and the Appearance Of Integrity

1. Non or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system?
2. Transparency – require the purging process for registration to be public and with an opportunity to for voters to correct an erroneous determination that they should be purged.
3. Transparency – require the evaluation process for provisional ballots to be public.
4. Training poll workers – provide guidance on how to provide information to potential voters on their options if their names do not appear not on the registration list.

#### H. Continuous Assessment of the Provisional Ballot -- Process and Performance (Quality Improvement Model)

Defining what constitutes a successful provisional voting system is difficult. The most successful system is probably not the one with the most provisional votes cast (which may indicate problems with the registration system). Nor is the system with the greatest number counted or with the fewest counted (the evaluation process is likely to be flawed).

Defining quality here requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes.

The first step to improving quality is to recognize the provisional voting process as a system and the consequent need to take a systems approach to regular evaluation through standardized metrics with explicit goals for performance.<sup>5</sup>

But a clear first step is to recommend to the states the metrics they can establish, collect and monitor to evaluate the quality of the provisional voting process and other aspects of the system. Among them might be:

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<sup>5</sup> Perhaps the EAC should engage one of the national quality organizations to evaluate the provisional ballot process within the broader context of the electoral system.

## DRAFT

1. Standard deviation of % of provisional ballots counted by county to estimate the consistency of the evaluation system within the state.
2. Set targets to reduce the number of provisional ballots cast as a measure of the quality of the registration system.
3. Election complaints by jurisdiction, from precinct to the state level.

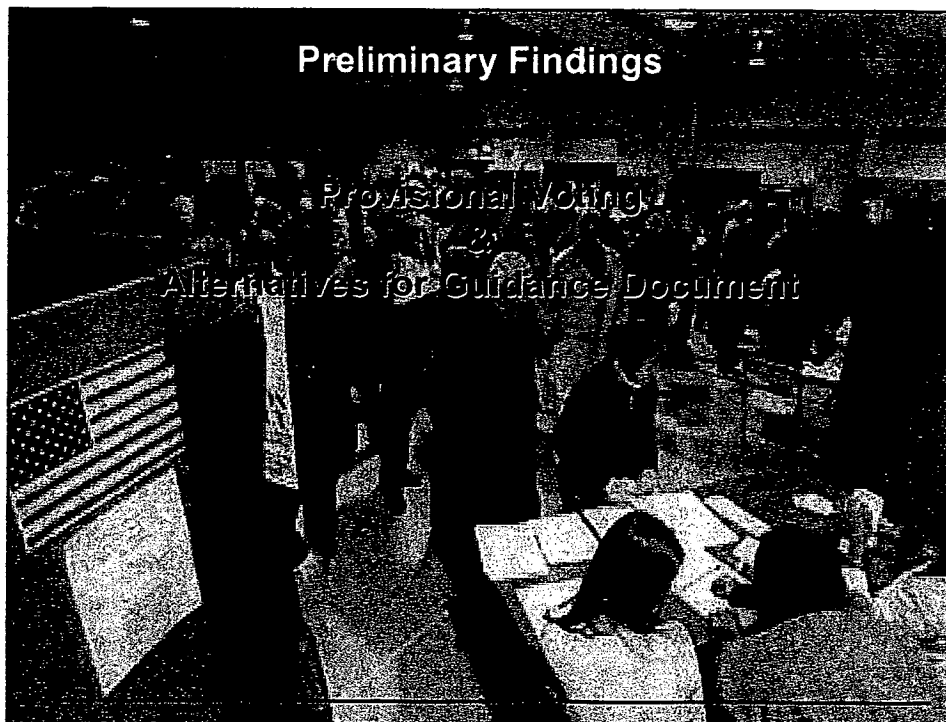
Briefing for

September 6 , 2005

Preliminary Findings

Provisional Voting

Alternatives for Guidance Document



### **QUESTIONS – TOPICS OF SPECIAL INTEREST**

1. How did states prepare for HAVA's provisional voting requirements?
2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?
3. How did litigation affect the implementation of Provisional Voting?
4. How effective was provisional voting in enfranchising qualified voters?
5. Did State and local processes provide for consistent counting of provisional ballots?
6. Did local election officials have a clear understanding of how to implement provisional voting?

#### **1. How did states prepare for HAVA's provisional voting requirements?**

Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.

Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.

- Only about 1 in 10 made available to poll workers a voter registration database.

- Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.

Wide variance existed in preparation to give voters a way to find out if their provisional ballots had been counted:

**2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?**

18 states were new to provisional voting; 25 others had experience.

Local election officials in the "old" states felt more confident.

9 out of 10 local officials in the "old" states felt that the support received from state government was adequate, compared to 8 in 10 in the "new" states.

"New" state officials felt:

- Voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted.
- More funding was needed to educate voters about their rights to cast a provisional ballot.

**2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?**

Difference in performance even more marked:

- Provisional ballots in "old states" = more than 2% of the total vote, 4 times the proportion in "new" states.
- Counting provisional ballots in the final vote, the "old" states averaged nearly double the number of the "new" states.
- In "old" states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the "new" states.

**Question 3: How did litigation affect the implementation of Provisional Voting?**

**Pre-election litigation clarified voters' rights to:**

- Sue in federal court to remedy violations of HAVA
- Receive provisional ballots, even though they would not be counted
- Be directed to the correct precinct
- Most pre-election litigation occurred too late to influence how states implemented provisional voting.

**Question 3: How did litigation affect the implementation of Provisional Voting?**

**Lawsuits filed shortly after Election Day to alter the outcome of a close election failed, but established principles:**

- States are not required to count provisional votes cast in the wrong precinct
- Provisional ballots cast at the correct polling site but at the wrong precinct are to be counted (New York)
- Provisional voters are to be protected against poll worker or clerical error (New York, Washington)



**Question 3: How did litigation affect the implementation of Provisional Voting?**

**Litigation is most useful when it:**

- **Occurs early in the process**
- **Does not seek to change the outcome of a race**
- **Aims to enhance the accuracy of the provisional voting process**

**Question 3: How did litigation affect the implementation of Provisional Voting?**

**Conclusions**

- **Litigation is more likely to yield a public benefit if it seeks to assure the accuracy of the provisional voting process rather than undo election results.**
- **Sensitive questions should not be resolved by the judiciary at a frenzied pace.**
- **Expect more litigation if states do not begin now to address ambiguities and problems that surfaced in the 2004 election.**

**Question 3: How did litigation affect the implementation of Provisional Voting?**

**Policy Implications**

**Guidance to the states on how to encourage earlier litigation**

**"Preferred practice" for states to preclude post-election challenges that could have been filed in a pre-election lawsuit.**

**States can distinguish between the two kinds of suits by providing a streamlined administrative remedial process for voters who believe their provisional ballot rights were mistreated and a more burdensome judicial proceeding to contest an election result.**

**Focus litigation on the ways state laws are allegedly deficient to:**

**Clarify the rules applicable to provisional voting**

**Assure that the rights protected by provisional voting laws are enforced**

**4. How effective was provisional voting in enfranchising qualified voters?**

**Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout. These voters otherwise would have been turned away at the polls.**

**The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.**

**Whatever the precise figure, there is room for improvement.**

**Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.**

**Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the "new" states.**

**Experience factor: mechanical or cultural?**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

**Little consistency existed among and within states.**

**The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.**

**The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.006%.**

**Share of provisional ballots in the total vote was six times greater in experienced states than in new states.**

**More rigorous the Voter ID requirements the smaller the percentage of provisional ballots that were counted.**

**"New" states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

**In-precinct versus out-of-precinct states had different outcomes.**

**States that allowed out-of-precinct ballots counted 56% of the provisional ballots.**

**States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.**

**In "old" states, this difference was greater.**

**52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.**

**If all states had counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

**In both "new" and "old" states, counties differed by as much as 90% to 100% in the rate at which ballots were cast and counted.**

**But differences between old and new states persisted:**

- **Officials from "old" states counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement.**
- **Officials from "new" states needed more time to implement provisional voting procedures and thought voters needed more information where to voted.**

**Officials from "new" states felt that provisional voting created unnecessary problems for election officials and poll workers.**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

**Conclusions**

**States have latitude in how they meet HAVA requirements.**

**A considerable degree of variation among the states is to be expected.**

**If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for "new" states, consistency may increase more quickly.**

**Did local election officials have a clear understanding of how to implement provisional voting?**

**How do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process?**

8 out of 10 county-level elections officials reported receiving instructions from their state government

4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities

**Objectively, how well did the process appear to be managed?**

Lack of consistency among and within states indicates wide differences in understanding by election officials.

The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.

## **DISCUSSION**

### **THE 6 QUESTIONS**

### **ALTERNATIVES OUTLINE**

**Briefing for**

**September 26, 2005**

**Briefing for**  
**U. S. Election Assistance Commission**  
**September 6, 2005**

## **QUESTIONS –TOPICS OF SPECIAL INTEREST**

- 1. How did states prepare for HAVA's provisional voting requirements?**
- 2. How did their preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**
- 3. How did litigation affect the implementation of Provisional Voting?**
- 4. How effective was provisional voting in enfranchising qualified voters?**
- 5. Did State and local processes provide for consistent counting of provisional ballots?**
- 6. Did local election officials have a clear understanding of how to implement provisional voting?**



## **1. How did states prepare for HAVA's provisional voting requirements?**

**Interviews told us how election officials prepared to administer the process.**

**Most received provisional voting instructions from state government.**

**The type and amount of instruction received varied widely across the states.**

**Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.**

- Only about 1 in 10 made available to poll workers a voter registration database.**
- Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.**

**Wide variance existed in preparation to give voters a way to find out if their provisional ballots had been counted.**

**2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?**

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**18 states were new to provisional voting; 25 others had experience.**

**Local election officials in the “old” states felt more confident.**

**9 out of 10 local officials in the “old” states felt that the support received from state government was adequate, compared to 8 in 10 in the “new” states.**

**“New” state officials felt:**

- **Voters did not receive enough information about the jurisdiction in which to cast a provisional ballot in order to be counted.**
- **More funding was needed to educate voters about their rights to cast a provisional ballot.**

**2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?**

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**Difference in performance even more marked:**

- **Provisional ballots in “old states” = more than 2% of the total vote, 4 times the proportion in “new” states.**
- **Counting provisional ballots in the final vote, the “old” states averaged nearly double the number of the “new” states.**
- **In “old” states, 1.48% of the total vote came from provisional ballots, six times more than the 0.23% in the “new” states.**

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

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#### **Pre-election litigation clarified voters' rights to:**

- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

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**Lawsuits filed shortly after Election Day to alter the outcome of a close election failed, but established principles:**

- **States are not required to count provisional votes cast in the wrong precinct**
- **Provisional ballots cast at the correct polling *site* but at the wrong precinct are to be counted (New York)**
- **Provisional voters are to be protected against poll worker or clerical error (New York, Washington)**

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

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#### **Litigation is most useful when it:**

- **Occurs early in the process**
- **Does not seek to change the outcome of a race**
- **Aims to enhance the accuracy of the provisional voting process**

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

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#### **Conclusions**

- **Litigation is more likely to yield a public benefit if it seeks to assure the accuracy of the provisional voting process, rather undo election results.**
- **Sensitive questions should not be resolved by the judiciary at a frenzied pace.**
- **Expect more litigation if states do not begin now to address ambiguities and problems that surfaced in the 2004 election.**

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

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#### **Policy Implications**

**Guidance to the states on how to encourage earlier, rather than later, litigation**

**“Preferred practice” for states to preclude post-election challenges that could have been filed in a pre-election lawsuit.**

**States can distinguish between the two kinds of suits by providing a streamlined administrative remedial process for voters who believe their provisional ballot rights were mistreated and a more burdensome judicial proceeding to contest an election result.**

#### **Focus litigation on the ways state laws are allegedly deficient to:**

- **Clarify the rules applicable to provisional voting**
- **Assure that the rights protected by provisional voting laws are enforced**



## **How effective was provisional voting in enfranchising qualified voters?**

**Provisional ballots enfranchised 1,2 million voters, or 1.01% of turnout. These voters otherwise would have been turned away at the polls.**

**The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.**

**Whatever the precise figure, there is room for improvement.**

**Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.**

**Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the “new” states.**

**Experience factor: mechanical or cultural?**

## **Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

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**Little consistency existed among and within states.**

**The use of provisional ballots was not distributed evenly across the country.**

**A few states accounted for most of the ballots cast.**

- **The 7% of the total vote represented by Alaska's counted provisional ballots was more than 1,000 times greater than Vermont's 0.0058%.**
- **Share of provisional ballots in the total vote was six times greater in experienced states than in new states.**

**More rigorous the Voter ID requirements and registration status, the smaller the percentage of provisional ballots that were counted.**

**“New” states with registration databases counted 20% of the ballots cast.**

**Those without databases counted more than double that rate (44%).**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

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**In-precinct versus out-of-precinct states had different outcomes.**

**States that allowed out-of-precinct ballots counted 56% of the provisional ballots.**

**States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.**

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**52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.**

**If all states had counted out-of-precinct ballots, perhaps 280,000 more voters would have been enfranchised across the country.**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

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**In both “new” and “old” states, counties differed by as much as 90% to 100% in the rate at which ballots were cast and counted.**

**But differences between old and new states persisted:**

- **Officials from “old” states counted more ballots, were better prepared to direct voters to their correct precincts with maps, and regarded provisional voting as easy to implement and enabling more people to vote.**
- **Officials from “new” states needed more information for voters about the jurisdiction where provisional ballots must be cast in order to be counted and needed more time to implement provisional voting procedures.**
- **Officials from “new” states felt that provisional voting created unnecessary problems for election officials and poll workers.**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

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**Conclusions**

**States have considerable latitude in how they meet HAVA requirements.**

**A considerable degree of variation among the states is to be expected.**

**If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for “new” states, consistency may increase more quickly.**

**Did local election officials have a clear understanding of how to implement provisional voting?**

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**How do the local officials themselves characterize their understanding of their responsibilities to manage the provisional voting process?**

**8 out of 10 county-level elections officials reported receiving instructions from their state government**

**4 out of 10 felt poll workers needed more training to understand their responsibilities.**

**Second, objectively how well did the process appear to be managed?**

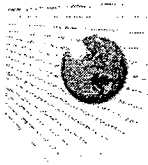
**Lack of consistency among and within states indicates wide differences in understanding by election officials.**

**The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.**

# **DISCUSSION**

## **THE 6 QUESTIONS**

## **ALTERNATIVES OUTLINE**



Nicole  
Mortellito/CONTRACTOR/EAC  
/GOV

09/02/2005 05:08 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Paul  
cc Adam Ambrogi/EAC/GOV@EAC, Arnie J.  
Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC  
bcc

Subject September 6 - Commissioners Discussion

Commissioners -

There are eleven discussion topics:

1. Arizona Matter - Gavin
2. Lever Machine Advisory - Gavin
3. NIST/TGDC - Tom Wilkey
  - Agenda comments
  - '07 Budget Request
4. Sole Source Contracts - Karen Lynn-Dyson
  - Council for Excellence in Government
  - National Academy of Sciences VR Database Technical Support
  - Design for Democracy
5. Eagleton Update - Karen and Tom Wilkey
  - Definition of Balance
6. September Meeting Agenda - Julie Thompson
7. GAO Comments - Tom, Brian Hancock & Julie
8. Election Day Survey Rollout -- Jeannie Layson
  - Consensus vote for consideration: Modification to EDS contract/distribution of state data
9. Carter-Baker Commission - Chair Hillman (discussion)
10. EAC 06 appropriation - Chair Hillman (discussion)
11. Assistance to States of Counties Affected by Hurricane Katrina - Tom (discussion)

Supporting documentation for some topics has been left in your offices or with your special assistants for your perusal.

Regards,

Nicole K. Mortellito  
Assistant to the Executive Director - Thomas R. Wilkey  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.3114 phone  
202.566.3127 fax

024217





Sheila A. Banks/EAC/GOV

08/22/2005 08:17 AM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Eagleton Contract

Karen,

I need a copy of the EAC contract with Eagleton and Eagleton's latest progress/activity report for the Chair. I'm meeting her at BWI at 2:30 p.m. today.

Thanks,  
Sheila

024218



"Tom O'Neill"

09/02/2005 04:48 PM

To tokaji.1@osu.edu, ireed@rutgers.edu,  
john.weingart@rutgers.edu, foley.33@osu.edu,  
rmandel@rci.rutgers.edu, rmandel@rci.rutgers.edu  
cc klynndyson@eac.gov

bcc

Subject New Peer Review Group Member

History:

☞ This message has been forwarded.

Tim O'Rourke, Dean of the Fulton School of Liberal Arts at Salisbury University in Maryland, has agreed to serve on the Peer Review Committee.

Tom O'Neill

024219



"Tom O'Neill"

09/01/2005 04:13 PM

To klynndyson@eac.gov

cc

bcc

Subject O'Rourke Bio

Karen:

I received the fax and will pass it around the team. Thanks,

Tom O'Neill

024220



"Tom O'Neill"

09/01/2005 03:34 PM

To klynndyson@eac.gov

cc

bcc

Subject Peer Review Group member

Karen,

I haven't received the fax about the potential new recruit for the Peer Review Group that you mentioned to me yesterday.

We have now completed the materials to be distributed to those attending the meeting at the EAC on September 6. You will receive a hard copy of all the material by express delivery tomorrow. The most important material to get to those attending in advance is the document with the answers to the 6 questions about topics of special interest on provisional voting outlined in our contract. The bulk of the material is backup to this summary report.

Tom O'Neill

024221